

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,

v.

THERION REESE,

Defendant.

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ID No. 1702004090;
1705016514; 1701016650

Submitted: February 1, 2019

Decided: April 12, 2019

ORDER

AND NOW TO WIT, this 12th day of April, 2019, upon consideration of Therion Reese's Motion to Sever Charges, Supplemental Motion to Sever, Supplemental Letter, the State's responses thereto, and the record **IT APPEARS THAT:**

1. Reese is indicted for three shooting incidents: (1) December 28, 2016 shooting of Norma Wright, (2) January 20, 2017 shooting of Kaden Young and Shayjuan Dickerson,¹ and (3) February 2, 2017 shooting of Jarron Hutson (the "February Shooting"). Cumulatively, Reese's charges for these incidents are Murder First Degree, two counts of Assault First Degree, Assault Second Degree, three counts of Possession of a Firearm by a Person Prohibited ("PFBPP"), three

¹ Reese argues that the January 20, 2017 incident is different from the other two incidents because the State's proffered evidence shows that it was a personal dispute and not a gang dispute. However, the State contends that Reese told another gang member to shoot Young and the evidence will show that this shooting was the result of illegal gang participation.

counts of Possession of a Firearm during the Commission of a Felony (“PFDCF”), two counts of Reckless Endangerment, Conspiracy First Degree, and Illegal Gang Participation.

2. Reese is charged with Illegal Gang Participation based on his alleged involvement in the “Shoot to Kill” Gang (“STK”). The State alleges that STK has upwards of thirty members who engage in a pattern of violent criminal activity. STK is alleged to primarily commit crimes with firearms and is in an ongoing feud with a rival gang, Only My Brother (“OMB”). According to the State, this feud has resulted in numerous homicides, and the State contends that the January 20, 2017 shooting is the result of this escalating feud.

3. In his Motion to Sever and supplemental filings, Reese seeks to have: (1) the PFBPP charges severed from the remaining indicted charges; (2) the shooting incidents tried separately; and (3) the Illegal Gang Participation charge tried separately. Reese contends that the charges must be severed to avoid prejudice, and if the charges are not severed, he will be forced to assert separate and distinct defenses (self-defense and identification) which will result in embarrassment and confusion.² Reese argues that in order to prove self-defense for the February Shooting he has to testify. But if Reese testifies, Reese will be subject to cross-examination about the other two shootings (that he does not want to testify about),

² Suppl. to Mot. to Sever Charges and Parties Pursuant to Rule 14, ¶ 3, Sept. 24, 2018.

and his silence about the other two shootings will cause the jury to infer guilt. Thus, according to Reese, to avoid prejudice and ensure a fair trial, severance of the shooting incidents is required.

4. Whether a motion to sever is granted or denied lies within the discretion of the trial court, and the Court makes its determination through a case-by-case analysis of the facts and circumstances.³ On a motion to sever, the defendant bears the burden to show joinder creates a “reasonable probability of substantial prejudice.”⁴ The defendant must show that the resulting prejudice manifestly outweighs the “dominant concern” of judicial economy and efficiency. A “mere hypothetical prejudice is not sufficient.”⁵

5. Pursuant to Superior Court Criminal Rule 8, to promote judicial economy and efficiency, a defendant may be charged with multiple offenses when the offenses “are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.”⁶ For properly joined offenses, Superior Court Criminal Rule 14 allows the charges to be severed for prejudice.⁷ There are three forms of

³ *Lampkins v. State*, 465 A.2d 785, 794 (Del. 1983).

⁴ *See Skinner v. State*, 575 A.2d 1108 (Del. 1990).

⁵ *See id.*; *see also State v. Flagg*, 739 A.2d 797 (Del. Super. 1999); *State v. Rivera*, 1995 WL 156059, at *3 (Del. Super. 1995).

⁶ Super. Ct. Crim. R. 8; *see also Mayer v. State*, 320 A.2d 713, 717 (Del. 1974) (holding rule of joinder is meant “to promote judicial economy and efficiency” so long as joinder is “consistent with the rights of the accused”).

⁷ Super. Ct. Crim. R. 14; *see also State v. McKay*, 382 A.2d 260, 262-63 (Del. Super. 1978).

prejudice: (1) when the jury cumulates evidence from one incident to find guilt for another incident but if tried separately the defendant would be found not guilty; (2) when the jury uses evidence from one count to infer a general criminal disposition; and (3) when presenting different and separate defenses subjects the defendant to embarrassment and confusion.⁸ In addition to these three forms of prejudice, “a crucial factor to be considered in making a final determination on [a motion to sever] should be whether the evidence of one crime would be admissible in the trial of the other crime[s].”⁹

6. The State argues that the shooting incidents should not be severed because Reese fails to demonstrate a substantial possibility of prejudice by joinder.¹⁰ The State contends Reese alleges mere hypothetical prejudice, which does not warrant severance when balanced against the interest of judicial economy and efficiency. The State further contends that even if the charges are severed, evidence of illegal gang participation is relevant and admissible for all three shooting incidents. Therefore, according to the State, the “independent logical relevance as to each incident” and “overlapping nature of the evidence” allows the charges to be tried jointly because Reese fails to “articulate the *real* and *substantial* prejudice he would

⁸ See *McKay*, 382 A.2d at 262; see also *Wiest v. State*, 542 A.2d 1193 (Del. 1988).

⁹ *Wood v. State*, 956 A.2d 1228, 1231 (Del. 2008) (admissibility is not a requisite for joinder); see also *Skinner*, 575 A.2d at 1118.

¹⁰ State’s Resp. to Def.’s Mot. for Severance of Offenses and Severance of Defs., ¶ 4.

suffer absent severance of the charges.”¹¹ Further, according to the State, although Reese might suffer prejudice if he testifies to claim self-defense but remains silent as to other subject matters, the issue is whether Reese is subject to *unfair* prejudice.

7. The Court first addresses the Motion to Sever the PFBPP charges. *State v. Williams*¹² and *Monceaux v. State*,¹³ are instructive for the status-based crime of PFBPP. In *Williams*, the Court held that the defendant’s right to due process would be impaired by prejudice if the status-based crime PFBPP was not severed.¹⁴ The Court reasoned that to prove PFBPP, the State must present evidence of the defendant’s prior criminal record and “the jury may be unable to compartmentalize their judgment of guilt or innocence with regard to each of the separate counts in the indictment, and may infer a general criminal disposition.”¹⁵ Similarly, in *Monceaux*, the Delaware Supreme Court held that the defendant would be prejudiced if the PFBPP charges were not severed.¹⁶ However, in *Monceaux*, the Delaware Supreme Court held that the prejudice was cured when the Superior Court redacted the charging documents presented to the jury and bifurcated the trial.¹⁷ The Court will

¹¹ State’s Resp. to Def.’s Suppl. Mot. to Sever Offenses, ¶ 8.

¹² *State v. Williams*, 2007 WL 2473428 (Del. Super. 2007).

¹³ *Monceaux v. State*, 51 A.3d 474 (Del. 2012).

¹⁴ *Williams*, 2007 WL 2473428, at *1.

¹⁵ *Id.*

¹⁶ *Monceaux*, 51 A.3d at 478.

¹⁷ *Id.*

follow *Monceaux*. The charging documents will be redacted for the jury and there will be a bifurcated trial on the PFBPP charges heard by the same jury.¹⁸

8. The Court next addresses the Motion to Sever the individual shootings. With respect to Reese's contention that he will be prejudiced if he has to present separate and distinct defenses (self-defense and identification) for the shootings, the Court finds that *State v. Flagg*¹⁹ is distinguishable and *State v. Garden*²⁰ applies. In *Flagg*, the Court severed the two sets of charges because of the defendant's unique circumstance of asserting an insanity defense for the first set and an identification defense for the second set.²¹ The Court reasoned that while the defendant did not suffer prejudice from overwhelming the jury with evidence, the defendant would be prejudiced and suffer "substantial injustice" because "presentation of the [second] incident in the State's case-in-chief will eliminate any meaningful consideration of a psychiatric defense to the [first incident]."²²

9. In *Garden*, the Superior Court denied severance because the two incidents Garden was charged with had the same general nature and similar modus operandi

¹⁸ The State agrees there is merit to Reese's argument to sever the PFBPP charges, but instead of having three separate trials as Reese urges, the State proposed three alternatives: (1) sanitization/stipulation; (2) simultaneous bench trial of the PFBPP charges; and (3) bifurcated jury trial. See State's Resp. to Def.'s Mot. for Severance of Offenses and Severance of Defs., ¶¶ 12-16.

¹⁹ *State v. Flagg*, 739 A.2d 797 (Del. Super. 1999).

²⁰ *State v. Garden*, 2000 WL 33114325 (Del. Super. 2000).

²¹ *Flagg*, 739 A.2d at 798, 800 (evidence of second incident allowed as rebuttal evidence to insanity defense).

²² *Id.*

evidence and the defendant did not meet his burden because he made a bare bones assertion of a hypothetical prejudice.²³ Garden admitted involvement in the first robbery but denied being involved in the “robbery-turned-murder.”²⁴ Thus, Garden admitted guilt to the first incident and asserted a defense of identity for the second incident. The Court in *Garden* distinguished *Flagg*, noting that in *Flagg* the defendant asserted an insanity defense and an identity defense, while Garden’s defenses were not “antagonistic or mutually exclusive.”²⁵ The Court held that admitting to one count and denying another count was not enough, and Garden failed to establish how the defenses were inconsistent and why Garden would be embarrassed.²⁶

10. Finally, the Court addresses the Motion to Sever the Illegal Gang Participation charge. The Court finds that *Taylor v. State*²⁷ is instructive on the issue of severing the Illegal Gang Participation charge. In *Taylor*, the Delaware Supreme Court affirmed the Superior Court denial of Taylor’s motion to sever because the evidence of gang motivation and retaliation was inextricably intertwined with the evidence of drug dealing and would have been admissible in separate trials for the

²³ *Garden*, 2000 WL 33114325, at *6.

²⁴ *Id.*

²⁵ *Id.* at *6.

²⁶ *Id.*

²⁷ *Taylor v. State*, 76 A.3d 791 (Del. 2013).

charges of murder, attempted murder, and additional felony charges.²⁸ In *Taylor*, the State elicited testimony that the defendant was a drug dealer and introduced his prior drug convictions. The Supreme Court held that this evidence was relevant to prove the existence of a criminal gang, which the defendant knowingly promoted. If the defendant had separate trials for murder, attempted murder, and other felony charges, the evidence would have been admissible in each trial.²⁹ According to the Supreme Court in *Taylor*, evidence of gang motivation and retaliation was important to the State's case-in-chief to show the defendant's motive to commit violent crimes, and if the gang participation was severed, the crimes would appear to be "random acts of violence."³⁰ Therefore, the Supreme Court held the Superior Court did not abuse its discretion by denying severance and the evidence was admissible and inextricably intertwined.³¹

11. The Court finds that, except for the PFBPP charges, Reese fails to meet his burden and merely shows hypothetical prejudice. Unlike in *Flagg*, Reese's defenses of self-defense and identification are not mutually exclusive and the presentation of one will not prevent the meaningful consideration of another defense.

²⁸ *Taylor*, 76 A.3d at 801; see also *Jeffrey Phillips v. State*, 154 A.3d 1146 (Del. 2017); *Otis Phillips v. State*, 154 A.3d 1130 (Del. 2017).

²⁹ *Taylor*, 76 A.3d at 801.

³⁰ *Id.*

³¹ *Id.*

Furthermore, the evidence is inextricably intertwined and is admissible as independently relevant. Therefore, joinder of the charges is proper.

WHEREFORE, Reese's Motion to Sever is **GRANTED** as to severance of the PFBPP charges; and **DENIED** as to severance of the individual shootings; and **DENIED** as to severance of the Illegal Gang Participation charge.

IT IS SO ORDERED.



Jan R. Jurden, President Judge

Original to Prothonotary:

cc: Therion Reese
Daniel B. McBride, Esq.
Kevin P. Tray, Esq.